

SUMMARY OF INTERVIEW

The courtesy of the Examiner in granting Applicants' attorneys, Staci E. Schweikert and Allen W. Inks, a telephone interview on November 15, 2005 is appreciated. During that interview, the Applicants' attorney discussed several issues. The Applicants' attorneys discussed the recapture doctrine and the necessity to clearly identify the necessary "substitute limitations" defined in each of the current claims for the Examiner. No agreement was reached with respect to the allowability of the Claims.

REMARKS

This Amendment is filed responsive to the Office Action dated August 30, 2005. Reconsideration of the application, as amended, is respectfully requested.

PARAGRAPH 2

The Examiner has rejected Claims 22, 36-38, 40, and 42-47 under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter. The Examiner has referenced arguments made in a Response dated December 10, 1998 to an Office Action in the prosecution of the original patent application. In particular, the Examiner has referenced page 15 of this response in which Applicants argued that "Steiner et al. do not teach or suggest, alone or in combination with the references of record, at least the underlined structure recited in Claim 1 of the instant application." The underlined structure as presented in the Response is listed below:

"a fluid separator unit...having a movable pressure boundary which enables, through movement thereof, said normal source of pressurized hydraulic fluid to selectively act upon said vehicle brake via a portion of said backup source when said valve is shut."

Applicants note that the Examiner has identified the elements of the underlined structure above as "key limitations" that the Examiner asserts are now required in all new independent claims to avoid recapture. Assuming, for the sake of argument, as the Examiner has asserted, that a "fluid separator and movable pressure boundary" and

"a valve for selectively preventing the flow of hydraulic brake fluid between the backup source and said vehicle brake" are elements added in response to an art rejection or are "key limitations," a substitute limitation that is related to the "key limitation" may be narrower or broader than the key limitation, as cited in *Attachment B, U.S.P.T.O. Memorandum dated August 4, 2003, entitled "Updated Guidance as to Applying the Recapture Rule to Reissue Applications," and Pannu v. Storz Instruments, Inc. 258 F.3d 1366*. In the Office Action, the above-described "substitute limitation" principle is summarized at page 5, paragraph C. In the accompanying amended and new claims, the "key limitations" or omitted limitation as asserted by the Examiner, have been replaced with a substitute limitation that is related to the subject matter previously surrendered by the Applicants as will be described herein. Applicants would like to bring to the Examiner's attention the "substitute limitations" corresponding to each of these "key limitations" in each of the rejected independent claims.

Claim 22:

Applicants note that Claim 22 includes "a normal hydraulic energy source" that may correspond to "a normal source of pressurized hydraulic brake fluid" as defined in original Claim 1. Claim 22 also includes "a master cylinder" that may correspond to "a backup source of pressurized hydraulic brake fluid" as defined in original Claim 1. Claim 22 includes "a respective normally open isolation valve being disposed between said master cylinder and said wheel brakes" which is a substitute limitation for the asserted "key limitation of "a valve for selectively preventing the flow of hydraulic brake fluid between the backup source and said vehicle brake." Claim 22 also includes the limitation "a respective fluid separator unit being interposed between each of said first and second wheel brakes of said first vehicle axle and an associated one of the electrically controllable brake valve devices, each of said fluid separator units having a movable component and cooperating with one another to form a pressure boundary that enables said normal source to selectively act upon said vehicle brake via a portion of said backup source" and the limitation "said isolation valves being

switched into a closed position when said wheel brakes are supplied with fluid from said normal hydraulic energy source," which are substitute limitations for the asserted "key limitation" of "a fluid separator unit having a movable pressure boundary which enables, through movement thereof, said normal source of pressurized hydraulic brake fluid to selectively act upon said vehicle brake via a portion of said backup source when said valve is shut." Accordingly, Applicants believe that Claim 22 is proper in scope with respect to the recapture doctrine, and the Examiner is requested to withdraw the rejection thereof under 35 U.S.C. § 251.

#### Claim 36

Applicants note that Claim 36 includes "a normal source of pressurized hydraulic brake fluid" that may correspond to "a normal source of pressurized hydraulic brake fluid" as defined in original Claim 1. Claim 22 also includes "a backup source of pressurized hydraulic brake fluid comprising a master cylinder" that may correspond to "a backup source of pressurized hydraulic brake fluid" as defined in original Claim 1. Claim 36 includes the limitation "a respective valve arrangement being disposed between said master cylinder and said wheel brakes in each of said first backup fluid conduit and said second backup fluid conduit and having a movable component forming a pressure boundary which enables said normal source of pressurized hydraulic brake fluid to selectively act upon said respective vehicle brakes via a portion of said backup source." Applicants note that these limitations are substitute limitations for the asserted "key limitations" of a fluid separator and movable pressure boundary and a valve as described above in reference to Claim 22. Accordingly, Applicants believe that Claim 36 is proper in scope with respect to the recapture doctrine, and the Examiner is requested to withdraw the rejection thereof under 35 U.S.C. § 251.

#### Claim 37

Applicants note that Claim 37 includes "a normal hydraulic energy source" that may correspond to "a normal source of pressurized hydraulic brake fluid" as defined in

original Claim 1. Claim 22 also includes "a master cylinder" that may correspond to "a backup source of pressurized hydraulic brake fluid" as defined in original Claim 1. Claim 37 includes "a respective normally open isolation valve being disposed between said master cylinder and said wheel brakes in each of said two brake circuits, each of said isolation valves being switched into a closed position when said wheel brakes are supplied with fluid from said normal hydraulic energy source" which is a substitute limitation for the asserted "key limitation of "a valve for selectively preventing the flow of hydraulic brake fluid between the backup source and said vehicle brake." Claim 37 includes the limitation "said respective fluid separator units having movable components that cooperate to enable said normal source of pressurized hydraulic brake fluid to selectively act upon said respective vehicle brakes via a portion of said backup source." Applicants note that this limitation is a substitute limitation for the asserted "key limitation" of a fluid separator and movable pressure boundary as described above in reference to Claim 22. Accordingly, Applicants believe that Claim 37 is proper in scope with respect to the recapture doctrine, and the Examiner is requested to withdraw the rejection thereof under 35 U.S.C. § 251.

Claim 38:

Applicants note that Claim 38 includes " a normal source of pressurized hydraulic brake fluid " that may correspond to "a normal source of pressurized hydraulic brake fluid" as defined in original Claim 1. Claim 38 also includes " a master cylinder " that may correspond to "a backup source of pressurized hydraulic brake fluid" as defined in original Claim 1. Claim 38 includes the limitations "a respective normally open isolation valve being disposed between said master cylinder and said respective one of said wheel brakes in each brake circuit, each of said isolation valves being electrically switched into a closed position when said wheel brakes are supplied with fluid from said normal source, each of said isolation valves having a movable component, said isolation valves cooperating with one another to form a pressure boundary that enables said normal source of pressurized hydraulic brake fluid to selectively act upon said vehicle brake via a portion of said backup source." Applicants note that these limitations are substitute

limitations for the asserted "key limitations" of a fluid separator and movable pressure boundary and valve as described above in reference to Claim 22. Accordingly, Applicants believe that Claim 38 is proper in scope with respect to the recapture doctrine, and the Examiner is requested to withdraw the rejection thereof under 35 U.S.C. § 251.

Claim 40:

Applicants note that Claim 40 includes " a normal source of pressurized hydraulic brake fluid " that may correspond to "a normal source of pressurized hydraulic brake fluid" as defined in original Claim 1. Claim 40 also includes " a master cylinder " that may correspond to "a backup source of pressurized hydraulic brake fluid" as defined in original Claim 1. Claim 40 includes the limitations " a respective electrically controllable brake valve device associated with each of said wheel brakes, said electrically controllable brake valve devices being arranged to block a respective flow path from said normal source to said wheel brakes and to open a respective flow path from said wheel brakes to said reservoir when no braking is being demanded, said respective valve devices cooperating to form a fluid separator having a movable pressure boundary that enables said normal source of pressurized hydraulic brake fluid to selectively act upon said respective vehicle brakes via a portion of said backup source." Applicants note that these limitations are substitute limitations for the asserted "key limitations" of a fluid separator and movable pressure boundary and valve as described above in reference to Claim 22. Accordingly, Applicants believe that Claim 40 is proper in scope with respect to the recapture doctrine, and the Examiner is requested to withdraw the rejection thereof under 35 U.S.C. § 251.

Claim 42:

Applicants note that Claim 42 includes " a normal fluid source" that may correspond to "a normal source of pressurized hydraulic brake fluid" as defined in original Claim 1. Claim 42 also includes "a backup fluid source" that may correspond to "a backup source of pressurized hydraulic brake fluid" as defined in original Claim

1. Claim 42 includes the limitations "a structure for receiving said first fluid and said second fluid for operation of the vehicle and having a movable pressure boundary for preventing intermixing of said first fluid and said second fluid while said vehicle brake is operating." Applicants note that these limitations are substitute limitations for the asserted "key limitations" of a fluid separator and movable pressure boundary and valve as described above in reference to Claim 22. Accordingly, Applicants believe that Claim 42 is proper in scope with respect to the recapture doctrine, and the Examiner is requested to withdraw the rejection thereof under 35 U.S.C. § 251.

### PARAGRAPH 3

The Examiner has rejected Claims 22, and 36 through 38, 40, and 42-47 under 35 U.S.C. § 103(a) as being unpatentable over Steiner, U.S. Patent No. 5,123,713 (Steiner '713) in view of Steiner et al., U.S. Patent Nos. 5,261,730 or 5,586,814. Applicants respectfully disagree.

The Steiner et al. reference '713 teaches a master cylinder 18 as a source of pressurized hydraulic brake fluid, and an auxiliary pressure source 43. When the brake pedal 16 is depressed, the master cylinder 18 supplies fluid to the brakes 12 and 13. While the master cylinder 18 is supplying fluid to the brakes 12, 13, if the ABS system 11 recognizes a locking condition in either of the brakes 12, 13 that requires control, the valve 48 is switched into its blocking position and the pressure modulator 24 is blocked from the master cylinder 18. The inlet control valve 39 is switched into its blocking position and the outlet control valve is switched into its through-flow position. The control pressure chamber 37 of the pressure modulator 24 is then pressure-relieved with respect to the reservoir 47. If the locking condition subsides, the valve 39 is switched back into its through-flow position, and fluid from the auxiliary pressure source 43 can be supplied to either of the brakes 12, 13. The auxiliary pressure source 43 can only supply pressurized fluid after the master cylinder 18 has supplied pressurized fluid to the brakes 12, 13 and the ABS system 11 has been activated. Therefore, the master cylinder 18 is the normal source of pressurized hydraulic fluid. The Steiner et al. reference teaches that the master cylinder 18 (the

normal source) is the only source of pressurized fluid in the event of electrical failure in the brake system. There is no other (backup) source of pressurized fluid to the brakes in such an event.

The Steiner et al. reference teaches a master cylinder 18 as the only source of pressurized fluid. The master cylinder 18 acts as the normal source of pressurized fluid and can act as a source of pressurized fluid in the event of an electrical failure. However, the Steiner et al. reference does not show or suggest two sources of pressurized fluid, as defined in Claims 22, 36-38, 40, and 42-47. Claims 22 and 37 through 40 recite a normal source and a master cylinder for carrying out a backup brake operation. Claim 36 recites a normal source and a backup source comprising a master cylinder. Claim 42 recites a normal fluid source and a backup fluid source. Therefore, each of Claims 22, 36-38, 40, and 42-47, respectively, define the invention as including two sources of fluid, (1) a normal source and (2) a backup source and/or a master cylinder.

The Specification at column 23, lines 57 through 65, describes the operation of the normal source and the backup source as follows, "as in the previous embodiments of the brake system 2, 200 and 300, upon failure of the normal source of pressurized hydraulic brake fluid 4 to the vehicle brakes 11a and 11b, or upon failure of the control module, the backup source 6 of pressurized hydraulic brake fluid supplied by the master cylinder 12 will be an available source of pressurized hydraulic brake fluid to be applied to the brakes of the brake system 350."

The Steiner et al. reference teaches an auxiliary pressure source 43 including a pump 77, which has been identified by the Examiner as a normal hydraulic energy source. However, the auxiliary pressure source 43 does not function as a normal source as described above and defined in the claims. The Steiner et al. reference teaches that the master cylinder 18 is the normal source of pressurized fluid. The Steiner et al. reference also teaches that the master cylinder 18 is the only source of pressurized fluid in the event of electrical failure in the brake system. The auxiliary pressure source 43 is also not a backup source of pressurized hydraulic fluid, as defined in Applicants' Specification and described above, since, for example, it cannot

supply pressurized fluid to the brakes in the event of an electrical failure, because it cannot position the electrical solenoid valves to do so. Steiner does not teach a backup source of pressurized fluid that is applied to the brakes 12, 13 that is separate from the normal source of pressurized fluid.

The master cylinder of Steiner cannot be considered both a normal source of pressure (as taught by Steiner) and a backup source of pressurized fluid (as suggested by the Examiner), to meet the limitations recited in Claims 22, 36-38, 40, and 42-47. The auxiliary pressure source 43 cannot be considered a normal source or a backup source of pressurized fluid to meet the limitations recited in Claims 22, 36-38, 40, and 42-47. Applicants again respectfully request reconsideration of the rejection of record.

#### CONCLUSION

It is believed that Claims 1-20 and 22-47 are in condition for allowance. Return of the original copy of the patent will occur when Applicants' attorney is notified that all claims are allowed, and no other issues remain to be resolved.